

LABOR CABINET
Department of Workplace Standards
(Amendment)

803 KAR 1:063. Trading time.

RELATES TO: KRS 337.275, 337.285, 45 U.S.C. 181

STATUTORY AUTHORITY: KRS 337.295

NECESSITY, FUNCTION, AND CONFORMITY: KRS 337.295 authorizes the commissioner~~[executive director]~~ to issue administrative regulations for special items usual in a particular employer-employee relationship. The function of this administrative regulation is to define the criteria to be met by public employers who wish to permit employees engaged in fire protection activities and any employee of a carrier by air subject to the provisions of 45 U.S.C. 181 (title II of the Railway Labor Act) to use the practice of "trading time."

Section 1. A common practice or agreement among employees engaged in fire protection activities and employees of a carrier by air subject to the provisions of 45 U.S.C. 181 (title II of the Railway Labor Act) is that of substituting for one another on regularly scheduled tours of duty (or for some part thereof) in order to permit an employee to absent himself or herself from work to attend to purely personal pursuits. This practice is commonly referred to as "trading time."

Section 2. The practice of "trading time" shall~~[will]~~ be deemed to have no effect on hours of work if the following criteria are met:

- (1) The trading of time is done voluntarily by the employees participating in the program and not at the behest of the employer;
- (2) The reason for trading time is due, not to the employer's business operations, but to the employee's desire or need to attend to personal matters; and
- (3) A record is maintained by the employer of all time traded by ~~[his]~~ employees.

KIMBERLEE C. PERRY, Commissioner

LARRY L. ROBERTS, Secretary

APPROVED BY AGENCY: June 14, 2021

FILED WITH LRC: June 14, 2021 at 2:11 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2021 at 2:00 p.m. (ET). This hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph 8(b) (R.S. 2020) and the continuing state of emergency due to the novel coronavirus pandemic. Public access to the meeting will be available at <https://us02web.zoom.us/j/83102207739?pwd=dUFjQzE0ZnJJdkpwME51ZWtQdUlydz09>, password 265686 or by telephone at (713) 353-0212 or 888-822-7517 (toll free), conference code 278497. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2021. Send notification of intent to be heard

at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Erin Bravo, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, KY 40601; phone (502) 564-1554; fax (502) 564-5484, email erin.bravo@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Erin Bravo

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation defines criteria that must be met by public employers who allow employees engaged in fire protection activities and any employee of a carrier by air subject to provisions of 45 U.S.C. 181(title II of the Railway Labor Act) to participate in the practice of trading time.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to define language to determine how to calculate time properly for public employers who allow employees engaged in fire protection activities and any employee of a carrier by air subject to provisions of 45 U.S.C. 181(title II of the Railway Labor Act) to participate in the practice of trading time.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the guidance for how to properly calculate time for subject employers and employees participating in the practice of trading time.

(2) If this is an amendment to an existing regulation, provide a brief summary of:

(a) How this amendment will change this existing administrative regulation: This amendment updates the administrative regulation to match the current language that is utilized.

(b) The necessity of the amendment to this administrative regulation: This amendment updates language to ensure compliance with KRS Chapter 13A and ensures effective guidance for the statutory provisions under KRS Chapter 337.275 and 337.285.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 337.295 authorizes the commissioner to promulgate administrative regulations under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405. This amendment updates the administrative regulation to match current language utilized by the department.

(d) How the amendment will assist in the effective administration of the statutes: This amendment updates language to clarify the criteria provided in the administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all subject employers who employ employees in the Commonwealth subject to KRS Chapter 337, as well as, their employees.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional compliance duties are required by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection and guidance to ensure the correct calculation of time for subject employers and employees.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This administrative regulation, as amended, is not anticipated to generate any new or additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: This administrative regulation, as amended, is not anticipated to generate any increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied. All public employers who allow employees engaged in fire protection activities and any employee of a carrier by air subject to provisions of 45 U.S.C. 181(title II of the Railway Labor Act) are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Most state and local governmental entities are subject to KRS Chapter 337.

2. Identify each state or federal statute or regulation that requires or authorizes the action taken by the administrative regulation. KRS 337.295, KRS 337.285, KRS 337.295.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue.

(b) How much revenue will the administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? There is no cost to this amendment.

(d) How much will it cost to administer this program for subsequent years? There is no cost to this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown

Expenditures (+/-): Unknown

Other explanations: This amendment does not impose any additional requirements or expenditures.